

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JULIO A. ANAYA,

Petitioner,

v.

B. CATES,

Respondent.

Case No. 1:21-cv-00737-SAB-HC

FINDINGS AND RECOMMENDATION TO
DISMISS PETITION FOR WRIT OF
HABEAS CORPUS

ORDER DIRECTING CLERK OF COURT
TO RANDOMLY ASSIGN DISTRICT
JUDGE

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

I.

BACKGROUND

On May 7, 2021, Petitioner filed the instant petition for writ of habeas corpus. (ECF No. 1). Although it is unclear, Petitioner, who is currently housed at the California Correctional Institution (“CCI”) in Tehachapi, appears to challenge his 2020 Ventura County Superior Court convictions and sentence on various due process grounds in addition to challenging CCI’s disapproval of Petitioner’s requests for early release and sentence recall. (ECF No. 1 at 3–4).¹

On May 14, 2021, the Court ordered Petitioner to show cause why the petition should not be dismissed for failure to exhaust state judicial remedies. (ECF No. 4). To date, no response to the Court’s order to show cause has been filed, and the time for doing so has passed.

¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

II.

DISCUSSION

Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a habeas petition and allows a district court to dismiss a petition before the respondent is ordered to file a response, if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.”

It appears that Petitioner failed to exhaust his claims raised in the instant petition. A petitioner in state custody who is proceeding with a petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based on comity to the state court and gives the state court the initial opportunity to correct the state’s alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982). A petitioner can satisfy the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider each claim before presenting it to the federal court. O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999); Duncan v. Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S. 270, 276 (1971).

The petition states that Petitioner did not file a direct appeal, did not seek the highest level of administrative review available, and did not file any other petitions. (ECF No. 1 at 5). Petitioner has failed to respond to the order to show cause. As it appears Petitioner has not sought relief in the California Supreme Court, the Court cannot proceed to the merits of his claims. 28 U.S.C. § 2254(b)(1). Accordingly, the Court finds that Petitioner’s claims are unexhausted and should be dismissed.

III.

RECOMMENDATION & ORDER

Based on the foregoing, the undersigned HEREBY RECOMMENDS that the petition for writ of habeas corpus be DISMISSED without prejudice for failure to exhaust state judicial remedies.

Further, the Clerk of Court is DIRECTED to randomly assign this action to a District Judge.

1 This Findings and Recommendation is submitted to the United States District Court
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304
3 of the Local Rules of Practice for the United States District Court, Eastern District of California.
4 Within **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may
5 file written objections with the Court and serve a copy on all parties. Such a document should be
6 captioned “Objections to Magistrate Judge’s Findings and Recommendation.” The assigned
7 District Judge will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C.
8 § 636(b)(1)(C). Petitioner is advised that failure to file objections within the specified time may
9 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
10 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

11 IT IS SO ORDERED.

12
13 Dated: **July 27, 2021**


UNITED STATES MAGISTRATE JUDGE